REFERENCE by the Collector of Land Revenue, Kluang, under the provisions of section 22 of the Land Enactment. The matter came on before Mr. Justice Mills in Chambers on April 14, 1936.

L. R. F. Earn (Collector of Land Revenue, Kluang) in person.

M. Ismail for K.R.P.R.K.P.L.S.M. Somasundaram Chettiar, 1st respondent

The second respondent did not appear.

Mills J.: The Court is asked to decide whether a transfer of a charge on land held by Entry in the Mukim Register under Part III of the Land Enactment may be registered.

The key appears to me to be found in section 47.

This section provides, as regards lands held under Part III, that "no interest.....shall be valid unless it has been registered.....in accordance with the provisions of this Enactment."

A transfer of a charge purports to create an interest in land.

This interest will be valid only if the transfer of the charge is registered in accordance with the provisions of the Land Enactment.

But the Enactment contains no provision for the registration of a transfer of a charge.

Therefore a transfer of a charge cannot create a valid interest in land.

It is true that the Enactment does not expressly prohibit the Collector from registering a transfer of a charge: but if the Collector were to register it, his act would be a nullity because such registration would not be "in accordance with the provisions of this Enactment." It is absurd to suppose that in an Enactment designed to clothe transactions with legal validity by registration, the Legislature could have intended to empower the Collector to make registrations which have no legal effect at all. There is a presumption against absurdity.

I conclude, therefore, that the Legislature intended that the Collector should register instruments in accordance with the provisions of the Land Enactment and not otherwise.

The answer to the question submitted to the Court is that a transfer of a charge on land held by Entry in the Mukim Register under Part III of the Land Enactment, cannot be registered.

It necessarily follows that the Collector should refuse to register any transactions other than those for which express provision is made in Part III of the Enactment: for instance, the Collector should refuse to register a lease.

On viewing the Land Enactment as a whole, on comparing its various sections and Schedules *inter se*, and on considering the provisions of the Mining Enactment, I feel some confidence in expressing the *obiter dictum* that the Commissioner should refuse to register any transactions other than those for which express provision is made in Part V of the Enactment: for instance, he should refuse to register a transfer of an easement: but this question has not been argued and I am open to be convinced that this *obiter dictum* is incorrect.

Order accordingly.

Solicitor for the 1st respondent — *M. Ismail.*

CHIA TECK LIANG v. TAN SOO KHIANG

[A.C.J. (Mills J.) June 17, 1936]
[Johore Bahru Civil Appeal No. 2 of 1936]

Practice — Judgment against administrator before grant issued — Validity of — Probate and Administration Enactment, s.70.

When a Court makes an order that letters of administration should issue to the petitioner, such an order does not constitute a "grant" within section 70 of the Probate and Administration Enactment.

An administrator cannot be sued in respect of a debt due by a deceased person, until letters of administration have been granted under seal.

MAGISTRATE'S CIVIL APPEAL.

[186] This is an appeal from a judgment for [186]
$254.81 and costs given by the Magistrate at Kota Tinggi in favour of the respondent on February 25, 1936 in Kota Tinggi Civil Suit No. 15 of 1936. The facts appear sufficiently from the judgment.

Das for the appellant.

S. B. Tan for the respondent.

Cur. Adv. Vult.

Mills J.: In this suit the Magistrate gave judgment for the plaintiff-respondent.

The appellant appealed on the ground, *inter alia*, that he was not the administrator of the estate.

I upheld the appellant's contention and allowed the appeal.

The respondent alleged in his plaint that the defendant was the administrator of the estate and testified in Court that letters of administration had been granted to the appellant.

It appeared from the Court records that the Assistant Registrar had made an order that letters of administration should issue to the appellant but that letters had not been granted under seal in the form prescribed in section 70 of the Probate and Administration Enactment.

Two questions arose for decision:—

(1) did the order of the Assistant Registrar constitute a "grant"?

(2) if not, could the appellant be sued as administrator before the Court had made the "grant"?

As to the first question: I admit I have some difficulty in construing section 70 of the Probate and Administration Enactment, but even if it contains an irreconcilable contradiction, the Court must hold, in my opinion, that the overriding words are "grant the same under its seal": it is quite clear that when the Judge makes an order on the Bench to the effect that letters of administration shall issue to the petitioner, he does not make a grant under seal: consequently

I hold that the order of the Assistant Registrar did not constitute a "grant" to the appellant.

As to the second question: no authority was quoted to me in support of the proposition that an administrator can be sued in respect of a debt due by the deceased before letters of administration have been granted to him: as regards the position of an executor the Privy Council has laid down the general proposition that he cannot be sued, "It is perfectly clear that Susy Fernando Bastian Appu, not having obtained a grant of probate, did not represent the estate of the deceased in the creditor's action"; *cf. Mohimadu Mohideen Hadjar* v. *Pitchey,* (1894) App. Cas. at p. 443: there being no statutory provision in Johore to the contrary, I think the Court must accept that general proposition as being correct with reference both to an executor and to an administrator: consequently I hold that an administrator cannot be sued in respect of a debt due by the deceased, until letters of administration have been granted under seal.

Appeal allowed.

Solicitors: *S. C. Goho & Co.; Donaldson & Burkinshaw.*

---

[187] PRIVY COUNCIL REPORTS

TAN AH BOON v. THE STATE OF JOHORE

[P.C. (Lords Blanesburgh, Russell of Killowen and Roche) May 21, 1930]

[Privy Council Appeal No. 57 of 1935]

Land — Occupation under approved application — Default in payment of rent — Recovery by sale of movable property — Johore Land Enactment, Part VII; Land Rules, rule 8.

In 1917 and 1918 the appellant, who had been in occupation of land at Jeram Batu Johore for some years previously, applied for the grant of the land in question to him by the State. Pending approval of this application he continued to occupy the land. In July 1922 the Collector of Land Revenue by letter signified approval of the alienation to the appellant of 110 acres of the state land on the terms and conditions set out in the Land Enactment, 1910 and Rules thereunder and subject to payment of a premium and an annual rent. The appellant made a deposit of the premium and the first year's rent and certain survey fees in compliance with the request contained in the letter. A grant in the form prescribed by the Land Enactment was, however, not issued to the appellant. The appellant paid rent for 6 years but made default in payment of rent on 1st January, 1929 and again on the 1st January, 1930. In July 1939 the Collector proceeded to apply for attachment of the movable property for the recovery of arrears of rent and to put the land up for sale by public auction. The sale proved abortive. In the following year the land was sold for an amount which after deduction of what was due for rent was paid over to the appellant. Until an order for possession was made against him, the appellant was still in occupation. The land was resold at an enhanced price in 1933. In an action by the appellant for damages for breach contract,

Held: that the appellant, owing to his serious default in the payment of rent, was precluded from maintaining the claim.

The judgment of the Johore Court of Appeal, reported sub. nom. *The State of Johore* v. *Tan Ah Boon,* in [1934] M.L.J. 142 upheld.

PRIVY COUNCIL APPEAL by Tan Ah Boon *in forma pauperis* to the Privy Council from a judgment of the Johore Court of Appeal (Huggard C.J., Thorne and Gerahty JJ.) dated the 19th April 1934, allowing an appeal against a judgment of Bailey J., dated the 21st December, 1933.

The facts sufficiently appear from the headnote above.

Sir Gerald Hurst, K.C., and *C. D. Myles* for the appellant. The issues are:

1. Whether by the letter of 25th July, 1922 the land was alienated to us on the terms and conditions set forth in the Land Enactment, 1911.

2. Whether, having let us go into occupation and spend money on the land the State is estopped from saying that Part VII of the Land Enactment does not apply.

3. Whether the State exhausted its remedies under Part VII before proceeding to sell the land.

4. Whether the conduct of the State was consistent with rescission of the contract, (which however was never pleaded).

The question of whether we had an equitable title or no is irrelevant as the suit was in contract.

The approval of the appellant's application was given in 1922 but by 1931 no grant had been issued.

Lord Roche: — Is there any evidence as to why the grant was not issued?

Sir G. Hurst: — None.

"Alienate" by the Land Enactment, means to sell or otherwise dispose of. The letter was a contract to grant us the land and therefore constituted alienation. Under Part VII when rent is in arrear the necessary steps for recovery are notice, attachment of movables, and finally sale of the land itself. The fact that there was other movable property on the land beside the pigs which were attached, is undisputed. The State must exhaust its remedies before selling the land. It did not do so in this case and the sale was therefore illegal. Exhibit E(1) (the general adviser's letter of 24th November, 1931 to the appellant) clearly shows that the officers of the Government of Johore had acted under Part VII of the Land Enactment. The fact that $268.50 the excess of the amount realised by the sale over the amount due for rent, had been refunded to the appellant showed the same thing. The pleadings in *Tan Tye Nguan* v. *Tan Ah Boon* [Exhibit C(1)] show that the plaintiff in that case, who was the assignee of the purchaser at the sale claimed by virtue of a sale for arrears of rent. He succeeded in this plea and the appellant was turned out of his land.

Lord Russell: — It is a question whether, the sale being illegal, the appellant's proper remedy was not to have appealed against the judgment in that case. If the present contention is correct, the appellant is still the owner of the land.

Sir G. Hurst: — In the statement of defence filed on behalf of the State there is no plea of rescission of the contract, and the judgment of Bailey J. finds that there was nothing in the [188] conduct of the State consistent with rescission. The judgment of the Court of Appeal states that the State rescinded the contract but in fact there is no evidence upon which this can be found. [188]